



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
MSC 06 101 19057

Office: NEW YORK

Date: **JUN 04 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant did not enter the United States on or before January 1, 1982 and was absent from the United States for longer than the allowed 45-day period. The director further discussed the factual discrepancies and statements made by the applicant at his interview, which cumulatively led to an adverse decision. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant reasserts the applicant's claim and submits a brief stating that Citizenship and Immigration Services' expectations regarding document production are unfair and contrary to the settlement agreements.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the

United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant failed to meet this burden. The record shows that prior to filing the Form I-687 that is adjudicated in the present matter, the applicant had completed another Form I-687 in 1990 and subsequently filed a Form I-485 seeking permanent resident status as a skilled worker. In support of his claimed continuous residence in the United States during the relevant time period, the applicant submitted the following documents:

1. An airline ticket purchase receipt showing the applicant as the purchaser. The receipt is date stamped March 7, 1987.
2. A letter from [REDACTED] dated September 15, 1990, accompanied by an English language translation, as well as an undated affidavit from [REDACTED] both attesting to the applicant's presence in the City of Ambato from June to July of 1987. Dr. [REDACTED] specified that the applicant was in Ambato from June 25, 1987 due to the illness of his mother.
3. An employment verification letter dated January 1990 (day unspecified) from [REDACTED] stating that the applicant was employed by this enterprise from August 1981 until December 1989. It is noted that only the first name [REDACTED] of the signing party is legible. This individual's last name is illegible and his title within the business has not been disclosed. Additionally, the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i) require that the claimed employer provide the applicant's address at the time of employment, specify the applicant's job duties, and indicate whether the information provided was obtained from

employment records and, if so, where such records are located. In the present matter, this necessary information was not provided. It is noted that with regard to the applicant's job duties, the employment letter merely stated that the applicant was employed as a "floor person." Thus, based on these numerous deficiencies, this employment letter will be afforded minimal weight as evidence of the applicant's residence in the United States during the relevant statutory period.

4. Affidavits from [REDACTED] and [REDACTED] dated January 27, 1991 and January 18, 1991, respectively. [REDACTED] claimed that he first met the applicant at an unnamed park in December 1982 and merely indicated that the applicant has been residing in New Jersey since such time. [REDACTED] claimed that he met the applicant in December 1987 at his cousin's house and also stated that the applicant had been living in New Jersey since such time. However, this information is directly contradicted by the applicant's Form I-687 applications both of which indicate that the applicant's residence in the United States from 1981 to 1990 was in the State of New York, not New Jersey, as claimed by both affiants. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the affidavits discussed above are inconsistent with information provided by the applicant, they will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.
5. An affidavit dated July 31, 1990 from [REDACTED] claiming that he met the applicant at a social gathering in January 1982. It is noted that this affiant attested to the applicant's residential addresses commencing in June 1981. The affiant's attempt to attest to the applicant's residential address in the United States for a time period during which he was not acquainted with the applicant renders this affiant's credibility questionable. Further, the affiant claimed that the applicant resided at [REDACTED], Richmond Hill, New York from June 1981 to January 1990. While the applicant provided this same information in the earlier Form I-687, dated September 1, 1990, in the most recent Form I-687, No. 30, the applicant claimed that his residence for that same time period was at [REDACTED] Patchogue, New York. Thus, neither this affiant's testimony, nor the information brought forth by the applicant in his earlier application are consistent with information provided by the same applicant in his recently filed Form I-687. There is no indication that these considerable inconsistencies have been acknowledged or resolved. *See id.* Accordingly, this affidavit will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.
6. A letter dated January 16, 1991 from [REDACTED] president of America Deportivo de Quito, claiming that the applicant had been a member of that institution since March 18, 1982. However, [REDACTED] did not identify the nature of the institution, nor did he comply with the guidelines regarding the applicant's membership or affiliation with churches,

unions, or other organizations as set forth in 8 C.F.R. § 245a.2(d)(3)(v), which requires that such attestations contain the address(es) where the applicant resided during the claimed membership and establish the origin of the information being attested to. As the required information is missing from [REDACTED]'s statement, this letter will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.

7. Two undated affidavits from [REDACTED] who stated that she had known the applicant for a long time and claimed that the applicant lived in her apartment located at [REDACTED] Union City, New Jersey since February 1990. However, the affiant did not identify the date she first met the applicant, nor did she indicate that she knew the applicant during the statutory period. Additionally, this information is inconsistent with the residence information provided in No. 32 of the applicant's recently filed Form I-687, where he claimed that he resided at [REDACTED], Patchoque, New York from June 1981 to the present. Accordingly, this letter will be afforded no weight as evidence of the applicant's residence in the United States during the statutory period.
8. An affidavit dated August 19, 1990 from [REDACTED] claiming that the applicant lived with him at [REDACTED], Richmond Hill, New York from June 1981 to January 1990. As previously noted, this information is inconsistent with the applicant's most recently filed Form I-687, where the applicant claimed that his residence for that same time period was at [REDACTED], Patchoque, New York. This discrepancy casts doubt on the reliability of this affidavit and the credibility of this affiant questionable.
9. An affidavit dated July 20, 1990 from [REDACTED] a, who claimed that the applicant lived at [REDACTED], Richmond Hill, New York from June 1981 to January 1990 and at [REDACTED] Union City, New Jersey from February 1990 through the date on the affidavit. As with several of the affidavits discussed above, this information is inconsistent with the most recently filed Form I-687, where the applicant claimed that he resided at [REDACTED] Patchoque, New York from June 1981 to the present. As a result of this discrepancy, this affiant's statement will be afforded minimal weight as evidence

Upon reviewing the applicant's interview responses as well as the various forms and supporting documentation submitted by the applicant, the district director issued a notice of intent to deny (NOID) dated August 15, 2006, noting a number of adverse findings. Namely, the director focused on the applicant's sworn statement, signed on June 19, 2006, where the applicant stated through a Spanish speaking translator that he first entered the United States in March of 1982 and subsequently departed in October of 1982 not to return to the United States until 1985.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period

allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c). The director concluded that the applicant's prolonged absence of more than 45 days rendered the applicant statutorily ineligible for temporary resident status.

Next, the director pointed out the discrepancy between the applicant's interview responses and the information provided in the recently filed Form I-687, noting that the applicant failed to disclose the prolonged absence in No. 32 of his application.

The director also observed a discrepancy between the Form G-325A submitted with his Form I-485 and the applicant's Forms I-687 and supporting documentation, noting that on the Form G-325A, the applicant provided an address in Ecuador as his residential address from January 1985 to January 1986, whereas he indicated on the Form s I-687 that he resided in New York during that time period.

In response to the NOID, counsel submitted a letter dated September 6, 2006 in which he vehemently protested any adverse findings, claiming that the applicant has used the services of various offices, which he claims has led to errors that have been recognized as inconsistencies.

On appeal from the director's September 13, 2006 decision denying the application, counsel further disputes the director's findings, asserting that the director's decision is contrary to the Act and the settlement agreement provisions. However, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the present matter, the record clearly establishes that the applicant has provided inconsistent information. Counsel's claim that these inconsistencies were the result of miscommunications between the applicant and the various individuals that assisted with his applications is simply insufficient to resolve the numerous inconsistencies that exist not only between the applicant's various applications and sworn statements made during his interview, but also in the statements made by the various affiants as discussed above. The applicant has submitted no additional documentation to reconcile the varying statements made by the applicant as well as a number of the affiants whose statements were previously submitted on the applicant's behalf.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the numerous inconsistencies and contradictions in the record noted above, seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's prolonged absence, his inconsistent statements, and his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Additionally, the regulation at 8 C.F.R. § 245a.2(k)(5) states the following:

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application.

While not addressed in the director's decision, the Federal Bureau of Investigations Criminal Justice Information Services Division shows that the applicant has been convicted of the following offenses:

1. On December 22, 1989, the applicant was charged in the State of New York with driving while under the influence. Subsequent to a plea of guilty, the applicant's license was revoked and he was ordered to pay a fine.
2. On April 2, 1990, the applicant was charged in the State of New York with operating a motor vehicle "10 of 1 pct alcohol 1<sup>st</sup>" and with aggravated unlicensed operation of a vehicle. The record shows that the applicant pled guilty to both offenses and ordered to pay a fine.

It is noted that the applicant did not provide the final court dispositions for any of the above offenses, nor did provide explanations or reveal any of these offenses either in No. 40 of the earlier Form I-687 or in No. 37 of the recently filed Form I-687. By failing to disclose his criminal history, which is directly relevant to the issue of his admissibility and eligibility for the immigration benefit sought the applicant has negated his own credibility as well as the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). As the applicant has not provided any documentation to establish that he has not been convicted of a felony or three misdemeanors, the AAO is precluded from finding the applicant eligible for temporary resident status on this additional basis.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.